

# **Exhibit D**

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**From:** Steven Biss <stevenbiss@earthlink.net>  
**Sent:** Wednesday, August 31, 2022 7:53 AM  
**To:** Hauser, Kristen; Donnellan, Jonathan  
**Cc:** Steven S. Biss; Bill McGinn  
**Subject:** Re: [EXTERNAL] Plaintiffs' Second Amended and Supplemental Disclosures  
**Attachments:** Plaintiffs' Second Amended and Supplemental Rule 26a1 Disclosures - 8.26.22.pdf

Kristen,

Good morning. I'm sure Nate Boyer briefed the entire team, but in case you didn't know, I am in a Jury trial in Richmond VA. Case goes to the Jury this afternoon.

After receiving your expert's damages report, my client began to compile a list of names of colleagues who have knowledge of the injuries to reputation caused by Hearst and Lizza. He emailed me the list yesterday after I had an opportunity to review your email. I will send you the list later today when my trial ends and I return to Charlottesville.

Steven S. Biss  
(Virginia State Bar # 32972)  
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On Aug 30, 2022, at 7:31 AM, Steven Biss <stevenbiss@earthlink.net> wrote:

Right on cue.

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On Aug 29, 2022, at 11:46 AM, Hauser, Kristen <khauser@hearst.com> wrote:

Dear Steve and Bill,

The attached document is untimely and deficient.

Rule 26(a)(1)(A)(i) plainly instructs that a party provide “**the name** and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.” (emphasis supplied). Those disclosures “must” be made “at or within 14 days after the parties’ Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan.... .” FRCP 26(a)(1)(B). The most recent Scheduling Order dated February 14, 2022, ECF No. 84, states in paragraph 1 that Initial Disclosures are complete. Plaintiffs have not objected to that order. There is no exception in Rule 26 or otherwise permitting the party to save the identities likely to have discoverable information for a revelation during the party’s deposition by his opponent. Rather, as you surely know, “[a] party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case.” FRCP 26(a)(1)(E). It is inconceivable that the names (and contact information) of these individuals are unavailable to former Congressman Nunes since the attached describes conversations he purportedly personally had with these individuals with whom he worked. You have also provided no explanation as to why these individuals were not disclosed by Plaintiff with his original Rule 26(a) disclosures, nor why this proposed disclosure would be timely under FRCP 26(e), and Plaintiff’s decision to withhold such disclosures until nearly the end of the discovery period is not only a plain violation of the Federal Rules and this Court’s Scheduling Order, but is prejudicial to Defendant’s ability to complete discovery in this case in advance of the court-ordered deadline.

Please send **today** your clients’ updated disclosures with the information required under the rules so that Defendants may subpoena, collect documents from, and depose these individuals, if Defendants choose to do so, before the close of discovery. Defendants reserve all rights, including but not limited to their right to move for sanctions against Plaintiff’s counsel for failure to disclose these purported witnesses pursuant to the Federal Rules and the Court’s ordered deadlines, and/or to preclude any evidence Plaintiff seeks to introduce arising from the knowledge of these previously-unidentified individuals.

Regards,  
Kristen

**Kristen L. Hauser**  
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**HEARST**

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**From:** Steven S. Biss <[stevenbiss@earthlink.net](mailto:stevenbiss@earthlink.net)>  
**Sent:** Friday, August 26, 2022 4:54 PM  
**To:** Donnellan, Jonathan <[JDonnellan@hearst.com](mailto:JDonnellan@hearst.com)>; Hauser, Kristen <[khauser@hearst.com](mailto:khauser@hearst.com)>; Park, Sarah <[Sarah.Park@hearst.com](mailto:Sarah.Park@hearst.com)>; Shah, Nina <[Nina.Shah@hearst.com](mailto:Nina.Shah@hearst.com)>; Boyer, Nathaniel <[Nathaniel.Boyer@hearst.com](mailto:Nathaniel.Boyer@hearst.com)>; Michael A. Giudicessi <[michael.giudicessi@faegredrinker.com](mailto:michael.giudicessi@faegredrinker.com)>; Nicholas A. Klinefeldt <[nick.klinefeldt@faegredrinker.com](mailto:nick.klinefeldt@faegredrinker.com)>  
**Cc:** Bill McGinn <[bmcginn@mcginnlawfirm.com](mailto:bmcginn@mcginnlawfirm.com)>  
**Subject:** [EXTERNAL] Plaintiffs' Second Amended and Supplemental Disclosures

All,

Attached in PDF are Plaintiffs' second amended and supplemental disclosures.

Call or email me if you have any questions.

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